

STATE OF NEW YORK

4360--A

2017-2018 Regular Sessions

IN ASSEMBLY

February 2, 2017

Introduced by M. of A. LENTOL -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the penal law, in relation to establishing new criminal discovery rules; and to repeal article 240 of the criminal procedure law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Article 240 of the criminal procedure law is REPEALED.
2 § 2. The criminal procedure law is amended by adding a new article 245
3 to read as follows:

ARTICLE 245

DISCOVERY

Section 245.10 Timing of discovery.

245.20 Automatic discovery.

245.25 Disclosure prior to guilty plea deadline.

245.30 Court orders for preservation, access or discovery.

245.35 Court ordered procedures to facilitate compliance.

245.40 Non-testimonial evidence from the defendant.

245.45 DNA comparison order.

245.50 Certificates of compliance.

245.55 Flow of information.

245.60 Continuing duty to disclose.

245.65 Work product.

245.70 Protective orders.

245.75 Waiver of discovery by defendant.

245.80 Remedies or sanctions for non-compliance.

245.85 Admissibility of discovery.

§ 245.10 Timing of discovery.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD03711-03-8

1 1. Prosecution's performance of obligations. (a) The prosecution shall
2 perform its initial discovery obligations under subdivision one of
3 section 245.20 of this article as soon as practicable but not later
4 than fifteen calendar days after the defendant's arraignment on an
5 indictment, superior court information, prosecutor's information, infor-
6 mation, or simplified information. Portions of materials claimed to be
7 non-discoverable may be withheld pending a determination and ruling of
8 the court under section 245.70 of this article; but the defendant shall
9 be notified in writing that information has not been disclosed under a
10 particular subdivision of such section, and the discoverable portions of
11 such materials shall be disclosed if practicable. When the discoverable
12 materials are exceptionally voluminous, the time period in this para-
13 graph may be stayed by up to an additional thirty calendar days without
14 need for a motion pursuant to subdivision two of section 245.70 of this
15 article.

16 (b) The prosecution shall perform its supplemental discovery obli-
17 gations under subdivision three of section 245.20 of this article as
18 soon as practicable but not later than fifteen calendar days before
19 trial.

20 (c) Upon timely defense request, the prosecution shall disclose mate-
21 rials under paragraph (a) of subdivision one of section 245.20 of this
22 article to any defendant who has been arraigned in a local criminal
23 court upon a currently undisposed of felony complaint charging an
24 offense which is a subject of a prospective or pending grand jury
25 proceeding, no later than forty-eight hours before the time scheduled
26 for the defendant to testify at a grand jury proceeding pursuant to
27 subdivision five of section 190.50 of this part.

28 2. Defendant's performance of obligations. The defendant shall perform
29 his or her discovery obligations under subdivision four of section
30 245.20 of this article not later than thirty calendar days after being
31 served with the prosecution's certificate of compliance pursuant to
32 subdivision one of section 245.50 of this article, except that portions
33 of materials claimed to be non-discoverable may be withheld pending a
34 determination and ruling of the court under section 245.70 of this arti-
35 cle; but the prosecution must be notified in writing that information
36 has not been disclosed under a particular section.

37 § 245.20 Automatic discovery.

38 1. Initial discovery for the defendant. The prosecution shall disclose
39 to the defendant, and permit the defendant to discover, inspect, copy or
40 photograph, each of the following items and information when it relates
41 to the subject matter of the case and is in the possession, custody or
42 control of the prosecution or persons under the prosecution's direction
43 or control:

44 (a) All written or recorded statements, and the substance of all oral
45 statements, made by the defendant or a co-defendant to a public servant
46 engaged in law enforcement activity or to a person then acting under his
47 or her direction or in cooperation with him or her, other than state-
48 ments made in the course of the criminal transaction.

49 (b) All transcripts of the testimony of a person who has testified
50 before a grand jury, including but not limited to the defendant or a
51 co-defendant. If in the exercise of reasonable diligence, and due to the
52 limited availability of transcription resources, a transcript is
53 unavailable for disclosure within the time period specified in subdivi-
54 sion one of section 245.10 of this article, such time period may be
55 stayed by up to an additional thirty calendar days without need for a
56 motion pursuant to subdivision two of section 245.70 of this article;

1 except that such disclosure shall be made as soon as practicable and not
2 later than thirty calendar days before a scheduled trial date, unless
3 an order is obtained pursuant to section 245.70 of this article. When
4 the court is required to review grand jury transcripts, the prosecution
5 shall disclose such transcripts to the court expeditiously upon receipt
6 by the prosecutor, notwithstanding the otherwise-applicable time periods
7 for disclosure in this article.

8 (c) The names of, and addresses or adequate alternative contact infor-
9 mation for, all persons other than law enforcement personnel whom the
10 prosecutor knows to have evidence or information relevant to any offense
11 charged or to a potential defense thereto, including a designation by
12 the prosecutor as to which of those persons may be called as witnesses.
13 Information under this subdivision relating to a confidential informant
14 may be withheld, and redacted from discovery materials, without need for
15 a motion pursuant to section 245.70 of this article; but the defendant
16 shall be notified in writing that such information has not been
17 disclosed, unless the court rules otherwise for good cause shown.

18 (d) The name and work affiliation of all law enforcement personnel
19 whom the prosecutor knows to have evidence or information relevant to
20 any offense charged or to a potential defense thereto, including a
21 designation by the prosecutor as to which of those persons may be called
22 as witnesses. Information under this subdivision relating to undercover
23 personnel may be withheld, and redacted from discovery materials, with-
24 out need for a motion pursuant to section 245.70 of this article; but
25 the defendant shall be notified in writing that such information has not
26 been disclosed, unless the court rules otherwise for good cause shown.

27 (e) All statements, written or recorded or summarized in any writing
28 or recording, made by persons who have evidence or information relevant
29 to any offense charged or to a potential defense thereto, including all
30 police reports and law enforcement agency reports. This provision also
31 includes statements, written or recorded or summarized in any writing or
32 recording, by persons to be called as witnesses at pre-trial hearings.

33 (f) Expert opinion evidence, including the name, business address,
34 current curriculum vitae, and a list of publications of each expert
35 witness whom the prosecutor intends to call as a witness at trial or a
36 pre-trial hearing, and all reports prepared by the expert that pertain
37 to the case, or if no report is prepared, a written statement of the
38 facts and opinions to which the expert is expected to testify and a
39 summary of the grounds for each opinion. This paragraph does not alter
40 or in any way affect the procedures, obligations or rights set forth in
41 section 250.10 of this title. If in the exercise of reasonable dili-
42 gence this information is unavailable for disclosure within the time
43 period specified in subdivision one of section 245.10 of this article,
44 that period shall be stayed without need for a motion pursuant to
45 subdivision two of section 245.70 of this article; except that the
46 disclosure shall be made as soon as practicable and not later than sixty
47 calendar days before a scheduled trial date, unless an order is obtained
48 pursuant to section 245.70 of this article. When the prosecution's
49 expert witness is being called in response to disclosure of an expert
50 witness by the defendant, the court shall alter a scheduled trial date,
51 if necessary, to allow the prosecution thirty calendar days to make the
52 disclosure and the defendant thirty calendar days to prepare and respond
53 to the new materials.

54 (g) All tapes or other electronic recordings which the prosecution
55 intends to introduce at trial or a pre-trial hearing.

1 (h) All photographs and drawings made or completed by a public servant
2 engaged in law enforcement activity, or which were made by a person
3 whom the prosecutor intends to call as a witness at trial or a pre-trial
4 hearing, or which the prosecution intends to introduce at trial or a
5 pre-trial hearing.

6 (i) All photographs, photocopies and reproductions made by or at the
7 direction of law enforcement personnel of any property prior to its
8 release pursuant to section 450.10 of the penal law.

9 (j) All reports, documents, data, calculations or writings, including
10 but not limited to preliminary tests or screening results and bench
11 notes, concerning physical or mental examinations, or scientific tests
12 or experiments or comparisons, and analyses performed electronically,
13 relating to the criminal action or proceeding which were made by or at
14 the request or direction of a public servant engaged in law enforcement
15 activity, or which were made by a person whom the prosecutor intends to
16 call as a witness at trial or a pre-trial hearing, or which the prose-
17 cution intends to introduce at trial or a pre-trial hearing.

18 (k) All evidence and information, including that which is known to
19 police or other law enforcement agencies acting on the government's
20 behalf in the case, that tends to: (i) negate the defendant's guilt as
21 to a charged offense; (ii) reduce the degree of or mitigate the defend-
22 ant's culpability as to a charged offense; (iii) support a potential
23 defense to a charged offense; (iv) impeach the credibility of a testi-
24 fying prosecution witness; (v) undermine evidence of the defendant's
25 identity as a perpetrator of a charged offense; (vi) provide a basis for
26 a motion to suppress evidence; or (vii) mitigate punishment. Informa-
27 tion under this subdivision shall be disclosed whether or not such
28 information is recorded in tangible form and irrespective of whether the
29 prosecutor credits the information. The prosecutor shall disclose the
30 information expeditiously upon its receipt and shall not delay disclo-
31 sure if it is obtained earlier than the time period for disclosure in
32 subdivision one of section 245.10 of this article.

33 (l) A summary of all promises, rewards and inducements made to, or in
34 favor of, persons who may be called as witnesses, as well as requests
35 for consideration by persons who may be called as witnesses and copies
36 of all documents relevant to a promise, reward or inducement.

37 (m) A list of all tangible objects obtained from, or allegedly
38 possessed by, the defendant or a co-defendant. The list shall include a
39 designation by the prosecutor as to which objects were physically or
40 constructively possessed by the defendant and were recovered during a
41 search or seizure by a public servant or an agent thereof, and which
42 tangible objects were recovered by a public servant or an agent thereof
43 after allegedly being abandoned by the defendant. If the prosecution
44 intends to prove the defendant's possession of any tangible objects by
45 means of a statutory presumption of possession, it shall designate such
46 intention as to each such object. If reasonably practicable, the prose-
47 cution shall also designate the location from which each tangible object
48 was recovered. There is also a right to inspect or copy or photograph
49 the listed tangible objects.

50 (n) Whether a search warrant has been executed and all documents
51 relating thereto, including but not limited to the warrant, the warrant
52 application, supporting affidavits, a police inventory of all property
53 seized under the warrant, and a transcript of all testimony or other
54 oral communications offered in support of the warrant application.

55 (o) All tangible property that the prosecution intends to introduce in
56 its case-in-chief at trial or a pre-trial hearing. If in the exercise of

1 reasonable diligence the prosecutor has not formed an intention within
2 the time period specified in subdivision one of section 245.10 of this
3 article that an item under this subdivision will be introduced at trial
4 or a pre-trial hearing, such time period shall be stayed without need
5 for a motion pursuant to subdivision two of section 245.70 of this arti-
6 cle; but the disclosure shall be made as soon as practicable and subject
7 to the continuing duty to disclose in section 245.60 of this article.

8 (p) The results of complete criminal history record checks for all
9 defendants and all persons designated as potential prosecution witnesses
10 pursuant to paragraph (c) of this subdivision, other than those
11 witnesses who are experts.

12 (q) When it is known to the prosecution, the existence of any pending
13 criminal action against all persons designated as potential prosecution
14 witnesses pursuant to paragraph (c) of this subdivision.

15 (r) The approximate date, time and place of the offense or offenses
16 charged and of the defendant's seizure and arrest.

17 (s) In any prosecution alleging a violation of the vehicle and traffic
18 law, where the defendant is charged by indictment, superior court infor-
19 mation, prosecutor's information, information, or simplified informa-
20 tion, the most recent record of inspection, calibration and repair of
21 machines and instruments utilized to perform any scientific tests and
22 experiments and the certification certificate, if any, held by the oper-
23 ator of the machine or instrument, and all other disclosures required
24 under this article.

25 (t) In any prosecution alleging a violation of section 156.05 or
26 156.10 of the penal law, the time, place and manner such violation
27 occurred.

28 2. Discovery by the prosecution. The prosecutor shall make a dili-
29 gent, good faith effort to ascertain the existence of material or infor-
30 mation discoverable under subdivision one of this section and to cause
31 such material or information to be made available for discovery where
32 it exists but is not within the prosecutor's possession, custody or
33 control; provided that the prosecutor shall not be required to obtain by
34 subpoena duces tecum material or information which the defendant may
35 thereby obtain. This provision shall not require the prosecutor to
36 ascertain the existence of witnesses not known to police or another law
37 enforcement agency, or the written or recorded statements thereof, under
38 paragraph (c) or (e) of subdivision one of this section.

39 3. Supplemental discovery for the defendant. The prosecution shall
40 disclose to the defendant a list of all misconduct and criminal acts of
41 the defendant not charged in the indictment, superior court information,
42 prosecutor's information, information, or simplified information, which
43 the prosecution intends to use at trial for purposes of (a) impeaching
44 the credibility of the defendant, or (b) as substantive proof of any
45 material issue in the case. In addition the prosecution shall designate
46 whether it intends to use each listed act for impeachment and/or as
47 substantive proof.

48 4. Reciprocal discovery for the prosecution. (a) The defendant shall,
49 subject to constitutional limitations, disclose to the prosecution, and
50 permit the prosecution to discover, inspect, copy or photograph, any
51 material and relevant evidence within the defendant's or counsel for the
52 defendant's possession or control that is discoverable under paragraphs
53 (f), (g), (h), (j), (l) and (o) of subdivision one of this section,
54 which the defendant intends to offer at trial or a pre-trial hearing,
55 and the names, addresses, birth dates, and all statements, written or
56 recorded or summarized in any writing or recording, of those persons

1 other than the defendant whom the defendant intends to call as witnesses
2 at trial or a pre-trial hearing.

3 (b) Disclosure of the name, address, birth date, and all statements,
4 written or recorded or summarized in any writing or recording, of a
5 person whom the defendant intends to call as a witness for the sole
6 purpose of impeaching a prosecution witness is not required until after
7 the prosecution witness has testified at trial.

8 (c) If in the exercise of reasonable diligence the reciprocally
9 discoverable information under paragraph (f) or (o) of subdivision one
10 of this section is unavailable for disclosure within the time period
11 specified in subdivision two of section 245.10 of this article, such
12 time period shall be stayed without need for a motion pursuant to subdi-
13 vision two of section 245.70 of this article; but the disclosure shall
14 be made as soon as practicable and subject to the continuing duty to
15 disclose in section 245.60 of this article.

16 5. Stay of automatic discovery; remedies and sanctions. Section 245.10
17 and subdivisions one, two, three and four of this section shall have
18 the force and effect of a court order, and failure to provide discovery
19 pursuant to such section or subdivision may result in application of any
20 remedies or sanctions permitted for non-compliance with a court order
21 under section 245.80 of this article. However, if in the judgment of
22 either party good cause exists for declining to make any of the disclo-
23 sures set forth above, such party may move for a protective order pursu-
24 ant to section 245.70 of this article and production of the item shall
25 be stayed pending a ruling by the court. The opposing party shall be
26 notified in writing that information has not been disclosed under a
27 particular section. When some parts of material or information are
28 discoverable but in the judgment of a party good cause exists for
29 declining to disclose other parts, the discoverable parts shall be
30 disclosed and the disclosing party shall give notice in writing that
31 non-discoverable parts have been withheld.

32 6. Redactions permitted. Either party may redact social security
33 numbers and tax numbers from disclosures under this article.

34 § 245.25 Disclosure prior to guilty plea deadline.

35 1. Pre-indictment guilty pleas. Upon a felony complaint, where the
36 prosecution has made a pre-indictment guilty plea offer requiring a plea
37 to a crime, the defendant shall have the right upon timely request and
38 reasonable notice to the prosecution to inspect any available police or
39 other law enforcement agency report of a factual nature regarding the
40 arrest or investigation of the charges, and/or any designated and avail-
41 able items or information that could be of material importance to the
42 decision on the guilty plea offer and would be discoverable prior to
43 trial under subdivision one of section 245.20 of this article. The pros-
44 ecution shall disclose the requested and designated items or informa-
45 tion, as well as any known information that tends to be exculpatory or
46 to support a defense to a charged offense, not less than three calendar
47 days prior to the expiration date of any guilty plea offer by the prose-
48 cution or any deadline imposed by the court for acceptance of a negoti-
49 ated guilty plea offer. If the prosecution does not comply with a prop-
50 er request made pursuant to this subdivision, the court may take
51 appropriate action as necessary to address the non-compliance, including
52 allowing a guilty plea to the original guilty plea offer notwithstanding
53 other provisions of this chapter. The inspection rights under this
54 subdivision do not apply to items or information that are the subject of
55 a protective order under section 245.70 of this article; but if such
56 information tends to be exculpatory, the court shall reconsider the

1 protective order. The court may deny an inspection right under this
2 subdivision when a reasonable person in the defendant's position would
3 not consider the requested and designated item or information to be of
4 material importance to the decision on the guilty plea offer. A defend-
5 ant may waive his or her rights under this subdivision; but a guilty
6 plea offer may not be conditioned on such waiver.

7 2. Other guilty pleas. Upon an indictment, superior court information,
8 prosecutor's information, information, simplified information, or
9 misdemeanor complaint, where the prosecution has made a guilty plea
10 offer requiring a plea to a crime, the defendant shall have the right
11 upon timely request and reasonable notice to the prosecution to inspect
12 any available police or other law enforcement agency report of a factual
13 nature regarding the arrest or investigation of the charges, and/or any
14 designated and available items or information that could be of material
15 importance to the decision on the guilty plea offer and would be discov-
16 erable prior to trial under subdivision one of section 245.20 of this
17 article. The prosecution shall disclose the requested and designated
18 items or information, as well as any known information that tends to be
19 exculpatory or to support a defense to a charged offense, not less than
20 seven calendar days prior to the expiration date of any guilty plea
21 offer by the prosecution or any deadline imposed by the court for a
22 guilty plea. If the prosecution does not comply with a proper request
23 made pursuant to this subdivision, the guilty plea offer may be deemed
24 available to the defendant until seven calendar days after the prose-
25 cution has made the disclosure or the court may take other appropriate
26 action as necessary to address the non-compliance. The inspection rights
27 under this subdivision do not apply to items or information that are the
28 subject of a protective order under section 245.70 of this article; but
29 if such information tends to be exculpatory, the court shall reconsider
30 the protective order. The court may deny an inspection right under this
31 subdivision when a reasonable person in the defendant's position would
32 not consider the requested and designated item or information to be of
33 material importance to the decision on the guilty plea offer. A defend-
34 ant may waive his or her rights under this subdivision, but a guilty
35 plea offer may not be conditioned on such waiver.

36 § 245.30 Court orders for preservation, access or discovery.

37 1. Order to preserve evidence. At any time, a party may move for a
38 court order to any individual, agency or other entity in possession,
39 custody or control of items which relate to the subject matter of the
40 case or are otherwise relevant, requiring that such items be preserved
41 for a specified period of time. The court shall hear and rule upon such
42 motions expeditiously. The court may modify or vacate such an order
43 upon a showing that preservation of particular evidence will create
44 significant hardship, on condition that the probative value of that
45 evidence is preserved by a specified alternative means.

46 2. Order to grant access to premises. At any time, the defendant may
47 move for a court order to any individual, agency or other entity in
48 possession, custody or control of a crime scene or other premises that
49 relates to the subject matter of the case or is otherwise relevant,
50 requiring that counsel for the defendant be granted prompt and reason-
51 able access to inspect, photograph or measure such crime scene or prem-
52 ises, and that the condition of the crime scene or premises remain
53 unchanged in the interim. The court shall hear and rule upon such
54 motions expeditiously. The court may modify or vacate such an order
55 upon a showing that granting access to a particular crime scene or prem-

ises will create significant hardship, on condition that the probative value of such location is preserved by a specified alternative means.

3. Discretionary discovery by order of the court. The court in its discretion may, upon a showing by the defendant that the request is reasonable and that the defendant is unable without undue hardship to obtain the substantial equivalent by other means, order the prosecution, or any individual, agency or other entity subject to the jurisdiction of the court, to make available for disclosure to the defendant any material or information which potentially relates to the subject matter of the case and is reasonably likely to be material. A motion under this subdivision must be on notice to any person or entity affected by the order. The court may, upon request of any person or entity affected by the order, modify or vacate the order if compliance would be unreasonable or will create significant hardship. The court may permit a party seeking or opposing a discretionary order of discovery under this subdivision, or another affected person or entity, to submit papers or testify on the record ex parte or in camera. Any such papers and a transcript of such testimony may be sealed and shall constitute a part of the record on appeal.

§ 245.35 Court ordered procedures to facilitate compliance.

To facilitate compliance with this article, and to reduce or streamline litigation of any disputes about discovery, the court in its discretion may issue an order:

1. Requiring that the prosecutor and counsel for the defendant diligently confer to attempt to reach an accommodation as to any dispute concerning discovery prior to seeking a ruling from the court;

2. Requiring a discovery compliance conference at a specified time prior to trial between the prosecutor, counsel for all defendants, and the court or its staff;

3. Requiring the prosecution to file an additional certificate of compliance that states that the prosecutor and/or an appropriate named agent has made reasonable inquiries of all police officers and other persons who have participated in investigating or evaluating the case about the existence of any favorable evidence or information within paragraph (k) of subdivision one of section 245.20 of this article, including such evidence or information that was not reduced to writing or otherwise memorialized or preserved as evidence, and has disclosed any such information to the defendant; and/or

4. Requiring other measures or proceedings designed to carry into effect the goals of this article.

§ 245.40 Non-testimonial evidence from the defendant.

1. Availability. After the filing of an accusatory instrument, and subject to constitutional limitations, the court may, upon motion of the prosecution showing probable cause to believe the defendant has committed the crime, a clear indication that relevant material evidence will be found, and that the method used to secure such evidence is safe and reliable, require a defendant to provide non-testimonial evidence, including to:

(a) Appear in a lineup;

(b) Speak for identification by a witness or potential witness;

(c) Be fingerprinted;

(d) Pose for photographs not involving reenactment of an event;

(e) Permit the taking of samples of the defendant's blood, hair, and other materials of the defendant's body that involves no unreasonable intrusion thereof;

(f) Provide specimens of the defendant's handwriting; and

1 (g) Submit to a reasonable physical or medical inspection of the
2 defendant's body.

3 2. Limitations. This section shall not be construed to alter or in any
4 way affect the issuance of a similar court order, as may be authorized
5 by law, before the filing of an accusatory instrument, consistent with
6 such rights as the defendant may derive from the state constitution or
7 the United States constitution. This section shall not be construed to
8 alter or in any way affect the administration of a chemical test where
9 otherwise authorized. An order pursuant to this section may be denied,
10 limited or conditioned as provided in section 245.70 of this article.

11 § 245.45 DNA comparison order.

12 Where property in the prosecution's possession, custody, or control
13 consists of a deoxyribonucleic acid ("DNA") profile obtained from
14 probative biological material gathered in connection with the investi-
15 gation of the crime, or the defendant, or the prosecution of the defend-
16 ant, and the defendant establishes (a) that such profile complies with
17 federal bureau of investigation or state requirements, whichever are
18 applicable and as such requirements are applied to law enforcement agen-
19 cies seeking a keyboard search or similar comparison, and (b) that the
20 data meets state DNA index system or national DNA index system criteria
21 as such criteria are applied to law enforcement agencies seeking such a
22 keyboard search or similar comparison, the court may, upon motion of a
23 defendant against whom an indictment, superior court information,
24 prosecutor's information, information, or simplified information is
25 pending, order an entity that has access to the combined DNA index
26 system or its successor system to compare such DNA profile against DNA
27 databanks by keyboard searches, or a similar method that does not
28 involve uploading, upon notice to both parties and the entity required
29 to perform the search, upon a showing by the defendant that such a
30 comparison is material to the presentation of his or her defense and
31 that the request is reasonable. For purposes of this section, a
32 "keyboard search" shall mean a search of a DNA profile against the
33 databank in which the profile that is searched is not uploaded to or
34 maintained in the databank.

35 § 245.50 Certificates of compliance.

36 1. By the prosecution. When the prosecution has provided the discovery
37 required by subdivision one of section 245.20 of this article, except
38 for any items or information that are the subject of an order pursuant
39 to section 245.70 of this article, it shall serve upon the defendant and
40 file with the court a certificate of compliance. The certificate of
41 compliance shall state that, after exercising due diligence and making
42 reasonable inquiries to ascertain the existence of material and infor-
43 mation subject to discovery, the prosecutor has disclosed and made
44 available all known material and information subject to discovery. It
45 shall also identify the items provided. If additional discovery is
46 subsequently provided prior to trial pursuant to section 245.60 of this
47 article, a supplemental certificate shall be served upon the defendant
48 and filed with the court identifying the additional material and infor-
49 mation provided. No adverse consequence to the prosecution or the prose-
50 cutor shall result from the filing of a certificate of compliance in
51 good faith; but the court may grant a remedy or sanction for a discov-
52 ery violation as provided in section 245.80 of this article.

53 2. By the defendant. When the defendant has provided all discovery
54 required by subdivision four of section 245.20 of this article, except
55 for any items or information that are the subject of an order pursuant
56 to section 245.70 of this article, counsel for the defendant shall serve

1 upon the prosecution and file with the court a certificate of compli-
2 ance. The certificate shall state that, after exercising due diligence
3 and making reasonable inquiries to ascertain the existence of material
4 and information subject to discovery, counsel for the defendant has
5 disclosed and made available all known material and information subject
6 to discovery. It shall also identify the items provided. If additional
7 discovery is subsequently provided prior to trial pursuant to section
8 245.60 of this article, a supplemental certificate shall be served upon
9 the prosecution and filed with the court identifying the additional
10 material and information provided. No adverse consequence to the
11 defendant or counsel for the defendant shall result from the filing of a
12 certificate of compliance in good faith; but the court may grant a reme-
13 dy or sanction for a discovery violation as provided in section 245.80
14 of this article.

15 § 245.55 Flow of information.

16 1. Sufficient communication for compliance. The district attorney and
17 the assistant responsible for the case, or, if the matter is not being
18 prosecuted by the district attorney, the prosecuting agency and its
19 assigned representative, shall endeavor to ensure that a flow of infor-
20 mation is maintained between the police and other investigative person-
21 nel and his or her office sufficient to place within his or her
22 possession or control all material and information pertinent to the
23 defendant and the offense or offenses charged, including, but not limit-
24 ed to, any evidence or information discoverable under paragraph (k) of
25 subdivision one of section 245.20 of this article.

26 2. Provision of law enforcement agency files. Absent a court order or
27 clear security requirement, upon request by the prosecution, a New York
28 state law enforcement agency shall make available to the prosecution a
29 complete copy of its complete files related to the investigation of the
30 case or the prosecution of the defendant for compliance with this arti-
31 cle.

32 3. 911 telephone call and police radio transmission electronic
33 recordings, police worn body camera recordings and other police
34 recordings. (a) Whenever an electronic recording of a 911 telephone
35 call or a police radio transmission or video or audio footage from a
36 police body-worn camera or other police recording was made or received
37 in connection with the investigation of an apparent criminal incident,
38 the arresting officer or lead detective shall expeditiously notify the
39 prosecution in writing upon the filing of an accusatory instrument of
40 the existence of all such known recordings. The prosecution shall expe-
41 ditiously take whatever reasonable steps are necessary to ensure that
42 all known electronic recordings of 911 telephone calls, police radio
43 transmissions and video and audio footage and other police recordings
44 made or available in connection with the case are preserved throughout
45 the pendency of the case. Upon the defendant's timely request and desig-
46 nation of a specific electronic recording of a 911 telephone call, the
47 prosecution shall also expeditiously take whatever reasonable steps are
48 necessary to ensure that it is preserved throughout the pendency of the
49 case.

50 (b) If the prosecution fails to disclose such an electronic recording
51 to the defendant pursuant to paragraph (e), (g) or (k) of subdivision
52 one of section 245.20 of this article due to a failure to comply with
53 this obligation by police officers or other law enforcement or prose-
54 cution personnel, the court upon motion of the defendant shall impose an
55 appropriate remedy or sanction pursuant to section 245.80 of this arti-
56 cle.

1 § 245.60 Continuing duty to disclose.

2 If either the prosecution or the defendant subsequently learns of
3 additional material or information which it would have been under a duty
4 to disclose pursuant to any provisions of this article at the time of a
5 previous discovery obligation or discovery order, it shall expeditiously
6 notify the other party and disclose the additional material or informa-
7 tion as required for initial discovery under this article. This
8 provision also requires expeditious disclosure by the prosecution of
9 material or information that became relevant to the case or discoverable
10 based upon reciprocal discovery received from the defendant pursuant to
11 subdivision four of section 245.20 of this article.

12 § 245.65 Work product.

13 This article does not authorize discovery by a party of those portions
14 of records, reports, correspondence, memoranda, or internal documents of
15 the adverse party which are only the legal research, opinions, theories
16 or conclusions of the adverse party or its attorney or the attorney's
17 agents, or of statements of a defendant, written or recorded or summa-
18 rized in any writing or recording, made to the attorney for the defend-
19 ant or the attorney's agents.

20 § 245.70 Protective orders.

21 1. Any discovery subject to protective order. Upon a showing of good
22 cause by either party, the court may at any time order that discovery or
23 inspection of any kind of material or information under this article be
24 denied, restricted, conditioned or deferred, or make such other order as
25 is appropriate. The court may impose as a condition on discovery to a
26 defendant that the material or information to be discovered be available
27 only to counsel for the defendant; or, alternatively, that counsel for
28 the defendant, and persons employed by the attorney or appointed by the
29 court to assist in the preparation of a defendant's case, may not
30 disclose physical copies of the discoverable documents to a defendant or
31 to anyone else, provided that the prosecution affords the defendant
32 access to inspect redacted copies of the discoverable documents at a
33 supervised location that provides regular and reasonable hours for such
34 access, such as a prosecutor's office, police station, facility of
35 detention, or court. The court may permit a party seeking or opposing a
36 protective order under this section, or another affected person, to
37 submit papers or testify on the record ex parte or in camera. Any such
38 papers and a transcript of such testimony may be sealed and shall
39 constitute a part of the record on appeal. This section does not alter
40 the allocation of the burden of proof with regard to matters at issue,
41 including privilege.

42 2. Modification of time periods for discovery. Upon motion of a party
43 in an individual case, the court may alter the time periods for discov-
44 ery imposed by this article upon a showing of good cause.

45 3. Prompt hearing. Upon request for a protective order, the court
46 shall conduct an appropriate hearing within three business days to
47 determine whether good cause has been shown and when practicable shall
48 render decision expeditiously. Any materials submitted and a transcript
49 of the proceeding may be sealed and shall constitute a part of the
50 record on appeal.

51 4. Showing of good cause. Good cause under this section may include:
52 constitutional rights or limitations; danger to the integrity of phys-
53 ical evidence; a substantial risk of physical harm, intimidation,
54 economic reprisal, bribery or unjustified annoyance or embarrassment to
55 any person; a substantial risk of an adverse effect upon the legitimate
56 needs of law enforcement, including the protection of the confidential-

1 ity of informants; danger to any person stemming from factors such as a
2 defendant's gang affiliation, prior history of interfering with
3 witnesses, or threats or intimidating actions directed at potential
4 witnesses; or other similar factors that also outweigh the usefulness
5 of the discovery.

6 5. Successor counsel or pro se defendant. In cases in which the attor-
7 ney-client relationship is terminated prior to trial for any reason,
8 any material or information disclosed subject to a condition that it be
9 available only to counsel for the defendant, or limited in dissemination
10 by protective order or otherwise, shall be provided only to successor
11 counsel for the defendant under the same condition or conditions or be
12 returned to the prosecution, unless the court rules otherwise for good
13 cause shown or the prosecutor gives written consent. Any work product
14 derived from such material or information shall not be provided to the
15 defendant, unless the court rules otherwise or the prosecutor gives
16 written consent. If the defendant is acting as his or her own attorney,
17 the court may regulate the time, place and manner of access to any
18 discoverable material or information; and it may as appropriate appoint
19 persons to assist the defendant in the investigation or preparation of
20 the case. Upon motion or application of a defendant acting as his or her
21 own attorney, the court may at any time modify or vacate any condition
22 or restriction relating to access to discoverable material or informa-
23 tion, for good cause shown.

24 6. Expedited review of adverse ruling. (a) A party that has unsucces-
25 fully sought, or unsuccessfully opposed the granting of, a protective
26 order under this section relating to the name, address, contact informa-
27 tion or statements of a person may obtain expedited review of that
28 ruling by an individual justice of the intermediate appellate court to
29 which an appeal from a judgment of conviction in the case would be
30 taken.

31 (b) Such review shall be sought within two business days of the
32 adverse or partially adverse ruling, by order to show cause filed with
33 the intermediate appellate court. The order to show cause shall in addi-
34 tion be timely served on the lower court and on the opposing party, and
35 shall be accompanied by a sworn affirmation stating in good faith (i)
36 that the ruling affects substantial interests, and (ii) that diligent
37 efforts to reach an accommodation of the underlying discovery dispute
38 with opposing counsel failed or that no accommodation was feasible;
39 except that service on the opposing party, and a statement regarding
40 efforts to reach an accommodation, are unnecessary where the opposing
41 party was not made aware of the application for a protective order and
42 good cause exists for omitting service of the order to show cause on the
43 opposing party. The lower court's order subject to review shall be
44 stayed until the appellate justice renders decision.

45 (c) The assignment of the individual appellate justice, and the mode
46 of and procedure for the review, are determined by rules of the individ-
47 ual appellate courts. The appellate justice may consider any relevant
48 and reliable information bearing on the issue, and may dispense with
49 written briefs other than supporting and opposing materials previously
50 submitted to the lower court. The appellate justice may dispense with
51 the issuance of a written opinion in rendering his or her decision, and
52 when practicable shall render decision expeditiously. Such review and
53 decision shall not affect the right of a defendant, in a subsequent
54 appeal from a judgment of conviction, to claim as error the ruling
55 reviewed.

1 7. Compliance with protective order. Any protective order issued under
2 this article is a mandate of the court for purposes of the offense of
3 criminal contempt in subdivision three of section 215.50 of the penal
4 law.

5 § 245.75 Waiver of discovery by defendant.

6 A defendant who does not seek discovery from the prosecution under
7 this article shall so notify the prosecution and the court at the
8 defendant's arraignment on an indictment, superior court information,
9 prosecutor's information, information, or simplified information, or
10 expeditiously thereafter but before receiving discovery from the prose-
11 cution pursuant to subdivision one of section 245.20 of this article,
12 and the defendant need not provide discovery to the prosecution pursuant
13 to subdivision four of section 245.20 and section 245.60 of this arti-
14 cle. A waiver shall be in writing and signed by the defendant and coun-
15 sel for the defendant. Such a waiver does not alter or in any way
16 affect the procedures, obligations or rights set forth in sections
17 250.10, 250.20 and 250.30 of this title, or otherwise established or
18 required by law. The prosecution may not condition a guilty plea offer
19 on the defendant's execution of a waiver under this section.

20 § 245.80 Remedies or sanctions for non-compliance.

21 1. Need for remedy or sanction. (a) When material or information is
22 discoverable under this article but is disclosed belatedly, the court
23 shall impose an appropriate remedy or sanction if the party entitled to
24 disclosure shows that it was prejudiced. Regardless of a showing of
25 prejudice the party entitled to disclosure shall be given reasonable
26 time to prepare and respond to the new material.

27 (b) When material or information is discoverable under this article
28 but cannot be disclosed because it has been lost or destroyed, the court
29 shall impose an appropriate remedy or sanction if the party entitled to
30 disclosure shows that the lost or destroyed material may have contained
31 some information relevant to a contested issue. The appropriate remedy
32 or sanction is that which is proportionate to the potential ways in
33 which the lost or destroyed material reasonably could have been helpful
34 to the party entitled to disclosure.

35 2. Available remedies or sanctions. For failure to comply with any
36 discovery order imposed or issued pursuant to this article, the court
37 may make a further order for discovery, grant a continuance, order that
38 a hearing be reopened, order that a witness be called or recalled,
39 instruct the jury that it may draw an adverse inference regarding the
40 non-compliance, preclude or strike a witness's testimony or a portion of
41 a witness's testimony, admit or exclude evidence, order a mistrial,
42 order the dismissal of all or some of the charges, or make such other
43 order as it deems just under the circumstances; except that any sanction
44 against the defendant shall comport with the defendant's constitutional
45 right to present a defense, and precluding a defense witness from
46 testifying shall be permissible only upon a finding that the defendant's
47 failure to comply with the discovery obligation or order was willful
48 and motivated by a desire to obtain a tactical advantage.

49 3. Consequences of non-disclosure of statement of testifying prose-
50 cution witness. The failure of the prosecutor or any agent of the prose-
51 cutor to disclose any written or recorded statement made by a prose-
52 cution witness which relates to the subject matter of the witness's
53 testimony shall not constitute grounds for any court to order a new
54 pre-trial hearing or set aside a conviction, or reverse, modify or
55 vacate a judgment of conviction, in the absence of a showing by the
56 defendant that there is a reasonable possibility that the non-disclosure

1 materially contributed to the result of the trial or other proceeding;
2 provided, however, that nothing in this section shall affect or limit
3 any right the defendant may have to a reopened pre-trial hearing when
4 such statements were disclosed before the close of evidence at trial.
5 § 245.85 Admissibility of discovery.

6 The fact that a party has indicated during the discovery process an
7 intention to offer specified evidence or to call a specified witness is
8 not admissible in evidence or grounds for adverse comment at a hearing
9 or a trial.

10 § 3. Subdivision 3 of section 610.20 of the criminal procedure law is
11 amended and a new subdivision 4 is added to read as follows:

12 3. An attorney for a defendant in a criminal action or proceeding, as
13 an officer of a criminal court, may issue a subpoena of such court,
14 subscribed by himself, for the attendance in such court of any witness
15 whom the defendant is entitled to call in such action or proceeding. An
16 attorney for a defendant may not issue a subpoena duces tecum of the
17 court directed to any department, bureau or agency of the state or of a
18 political subdivision thereof, or to any officer or representative ther-
19 eof, unless the subpoena is endorsed by the court and provides at least
20 three days for the production of the requested materials. In the case of
21 an emergency, the court may by order dispense with the three-day
22 production period. Such a subpoena duces tecum may be issued in behalf
23 of a defendant upon order of a court pursuant to the rules applicable to
24 civil cases as provided in section twenty-three hundred seven of the
25 civil practice law and rules.

26 4. The showing required to sustain any subpoena under this section is
27 that the testimony or evidence sought is reasonably likely to be rele-
28 vant and material to the proceedings, and the subpoena is not overbroad
29 or unreasonably burdensome.

30 § 4. Section 65.20 of the criminal procedure law, as added by chapter
31 505 of the laws of 1985, subdivision 2 as added, the opening paragraph
32 of subdivision 10 as amended and subdivisions 3, 4, 5, 6, 7, 8, 9, 10,
33 11, 12 and 13 as renumbered by chapter 548 of the laws of 2007, subdivi-
34 sion 7 and paragraph (k) of subdivision 10 as amended by chapter 320 of
35 the laws of 2006 and subdivisions 11 and 12 as amended by chapter 455 of
36 the laws of 1991, is amended to read as follows:

37 § 65.20 Closed-circuit television; procedure for application and grounds
38 for determination.

39 1. Prior to the commencement of a criminal proceeding; other than a
40 grand jury proceeding, either party may apply to the court for an order
41 declaring that a child witness is vulnerable.

42 2. A child witness should be declared vulnerable when the court, in
43 accordance with the provisions of this section, determines by clear and
44 convincing evidence that the child witness would suffer serious mental
45 or emotional harm that would substantially impair the child witness'
46 ability to communicate with the finder of fact without the use of live,
47 two-way closed-circuit television.

48 3. A motion pursuant to subdivision one of this section must be made
49 in writing at least eight days before the commencement of trial or other
50 criminal proceeding upon reasonable notice to the other party and with
51 an opportunity to be heard.

52 4. The motion papers must state the basis for the motion and must
53 contain sworn allegations of fact which, if true, would support a deter-
54 mination by the court that the child witness is vulnerable. Such allega-
55 tions may be based upon the personal knowledge of the deponent or upon

1 information and belief, provided that, in the latter event, the sources
2 of such information and the grounds for such belief are stated.

3 5. The answering papers may admit or deny any of the alleged facts and
4 may, in addition, contain sworn allegations of fact relevant to the
5 motion, including the rights of the defendant, the need to protect the
6 child witness and the integrity of the truth-finding function of the
7 trier of fact.

8 6. Unless all material facts alleged in support of the motion made
9 pursuant to subdivision one of this section are conceded, the court
10 shall, in addition to examining the papers and hearing oral argument,
11 conduct an appropriate hearing for the purpose of making findings of
12 fact essential to the determination of the motion. Except as provided in
13 subdivision [~~six~~] seven of this section, it may subpoena or call and
14 examine witnesses, who must either testify under oath or be permitted to
15 give unsworn testimony pursuant to subdivision two of section 60.20 and
16 must authorize the attorneys for the parties to do the same.

17 7. Notwithstanding any other provision of law, the child witness who
18 is alleged to be vulnerable may not be compelled to testify at such
19 hearing or to submit to any psychological or psychiatric examination.
20 The failure of the child witness to testify at such hearing shall not be
21 a ground for denying a motion made pursuant to subdivision one of this
22 section. Prior statements made by the child witness relating to any
23 allegations of conduct constituting an offense defined in article one
24 hundred thirty of the penal law or incest as defined in section 255.25,
25 255.26 or 255.27 of such law or to any allegation of words or conduct
26 constituting an attempt to prevent, impede or deter the child witness
27 from cooperating in the investigation or prosecution of the offense
28 shall be admissible at such hearing, provided, however, that a declara-
29 tion that a child witness is vulnerable may not be based solely upon
30 such prior statements.

31 8. (a) Notwithstanding any of the provisions of article forty-five of
32 the civil practice law and rules, any physician, psychologist, nurse or
33 social worker who has treated a child witness may testify at a hearing
34 conducted pursuant to subdivision [~~five~~] six of this section concerning
35 the treatment of such child witness as such treatment relates to the
36 issue presented at the hearing, provided that any otherwise applicable
37 statutory privileges concerning communications between the child witness
38 and such physician, psychologist, nurse or social worker in connection
39 with such treatment shall not be deemed waived by such testimony alone,
40 except to the limited extent of permitting the court alone to examine in
41 camera reports, records or documents, if any, prepared by such physi-
42 cian, psychologist, nurse or social worker. If upon such examination the
43 court determines that such reports, records or documents, or any one or
44 portion thereof, contain information material and relevant to the issue
45 of whether the child witness is a vulnerable child witness, the court
46 shall disclose such information to both the attorney for the defendant
47 and the district attorney.

48 (b) At any time after a motion has been made pursuant to subdivision
49 one of this section, upon the demand of the other party the moving party
50 must furnish the demanding party with a copy of any and all of such
51 records, reports or other documents in the possession of such other
52 party and must, in addition, supply the court with a copy of all such
53 reports, records or other documents which are the subject of the demand.
54 At any time after a demand has been made pursuant to this paragraph, the
55 moving party may demand that property of the same kind or character in
56 possession of the party that originally made such demand be furnished to

1 the moving party and, if so furnished, be supplied, in addition, to the
2 court.

3 9. (a) Prior to the commencement of the hearing conducted pursuant to
4 subdivision [~~five~~] six of this section, the district attorney shall,
5 subject to a protective order, comply with the provisions of paragraph
6 (c) of subdivision one of section [~~240.45~~] 245.20 of this chapter as
7 they concern any witness whom the district attorney intends to call at
8 the hearing and the child witness.

9 (b) Before a defendant calls a witness at such hearing, he or she
10 must, subject to a protective order, comply with the provisions of
11 subdivision [~~two~~] four of section [~~240.45~~] 245.20 of this chapter as
12 they concern all the witnesses the defendant intends to call at such
13 hearing.

14 10. The court may consider, in determining whether there are factors
15 which would cause the child witness to suffer serious mental or
16 emotional harm, a finding that any one or more of the following circum-
17 stances have been established by clear and convincing evidence:

18 (a) The manner of the commission of the offense of which the defendant
19 is accused was particularly heinous or was characterized by aggravating
20 circumstances.

21 (b) The child witness is particularly young or otherwise particularly
22 subject to psychological harm on account of a physical or mental condi-
23 tion which existed before the alleged commission of the offense.

24 (c) At the time of the alleged offense, the defendant occupied a posi-
25 tion of authority with respect to the child witness.

26 (d) The offense or offenses charged were part of an ongoing course of
27 conduct committed by the defendant against the child witness over an
28 extended period of time.

29 (e) A deadly weapon or dangerous instrument was allegedly used during
30 the commission of the crime.

31 (f) The defendant has inflicted serious physical injury upon the child
32 witness.

33 (g) A threat, express or implied, of physical violence to the child
34 witness or a third person if the child witness were to report the inci-
35 dent to any person or communicate information to or cooperate with a
36 court, grand jury, prosecutor, police officer or peace officer concern-
37 ing the incident has been made by or on behalf of the defendant.

38 (h) A threat, express or implied, of the incarceration of a parent or
39 guardian of the child witness, the removal of the child witness from the
40 family or the dissolution of the family of the child witness if the
41 child witness were to report the incident to any person or communicate
42 information to or cooperate with a court, grand jury, prosecutor, police
43 officer or peace officer concerning the incident has been made by or on
44 behalf of the defendant.

45 (i) A witness other than the child witness has received a threat of
46 physical violence directed at such witness or to a third person by or on
47 behalf of the defendant.

48 (j) The defendant, at the time of the inquiry, (i) is living in the
49 same household with the child witness, (ii) has ready access to the
50 child witness or (iii) is providing substantial financial support for
51 the child witness.

52 (k) The child witness has previously been the victim of an offense
53 defined in article one hundred thirty of the penal law or incest as
54 defined in section 255.25, 255.26 or 255.27 of such law.

1 (1) According to expert testimony, the child witness would be partic-
2 ularly [~~susceptible~~] susceptible to psychological harm if required to
3 testify in open court or in the physical presence of the defendant.

4 11. Irrespective of whether a motion was made pursuant to subdivision
5 one of this section, the court, at the request of either party or on its
6 own motion, may decide that a child witness may be vulnerable based on
7 its own observations that a child witness who has been called to testify
8 at a criminal proceeding is suffering severe mental or emotional harm
9 and therefore is physically or mentally unable to testify or to continue
10 to testify in open court or in the physical presence of the defendant
11 and that the use of live, two-way closed-circuit television is necessary
12 to enable the child witness to testify. If the court so decides, it must
13 conduct the same hearing that subdivision [~~five~~] six of this section
14 requires when a motion is made pursuant to subdivision one of this
15 section, and it must make findings of fact pursuant to subdivisions
16 [~~nine~~] ten and [~~eleven~~] twelve of this section, before determining that
17 the child witness is vulnerable.

18 12. In deciding whether a child witness is vulnerable, the court shall
19 make findings of fact which reflect the causal relationship between the
20 existence of any one or more of the factors set forth in subdivision
21 [~~nine~~] ten of this section or other relevant factors which the court
22 finds are established and the determination that the child witness is
23 vulnerable. If the court is satisfied that the child witness is vulner-
24 able and that, under the facts and circumstances of the particular case,
25 the defendant's constitutional rights to an impartial jury or of
26 confrontation will not be impaired, it may enter an order granting the
27 application for the use of live, two-way closed-circuit television.

28 13. When the court has determined that a child witness is a vulnerable
29 child witness, it shall make a specific finding as to whether placing
30 the defendant and the child witness in the same room during the testimo-
31 ny of the child witness will contribute to the likelihood that the child
32 witness will suffer severe mental or emotional harm. If the court finds
33 that placing the defendant and the child witness in the same room during
34 the testimony of the child witness will contribute to the likelihood
35 that the child witness will suffer severe mental or emotional harm, the
36 order entered pursuant to subdivision [~~eleven~~] twelve of this section
37 shall direct that the defendant remain in the courtroom during the
38 testimony of the vulnerable child witness.

39 § 5. Subdivision 5 of section 200.95 of the criminal procedure law, as
40 added by chapter 558 of the laws of 1982, is amended to read as follows:

41 5. Court ordered bill of particulars. Where a prosecutor has timely
42 served a written refusal pursuant to subdivision four of this section
43 and upon motion, made in writing, of a defendant, who has made a request
44 for a bill of particulars and whose request has not been complied with
45 in whole or in part, the court must, to the extent a protective order is
46 not warranted, order the prosecutor to comply with the request if it is
47 satisfied that the items of factual information requested are authorized
48 to be included in a bill of particulars, and that such information is
49 necessary to enable the defendant adequately to prepare or conduct his
50 defense and, if the request was untimely, a finding of good cause for
51 the delay. Where a prosecutor has not timely served a written refusal
52 pursuant to subdivision four of this section the court must, unless it
53 is satisfied that the people have shown good cause why such an order
54 should not be issued, issue an order requiring the prosecutor to comply
55 or providing for any other order authorized by [~~subdivision one of~~
56 ~~section 240.70~~] section 245.80 of this part.

§ 6. Paragraph (c) of subdivision 1 of section 255.10 of the criminal procedure law, as added by chapter 763 of the laws of 1974, is amended to read as follows:

(c) granting discovery pursuant to article [240] 245; or

§ 7. Subdivision 1 of section 255.20 of the Criminal procedure law, as amended by chapter 369 of the laws of 1982, is amended to read as follows:

1. Except as otherwise expressly provided by law, whether the defendant is represented by counsel or elects to proceed pro se, all pre-trial motions shall be served or filed within forty-five days after arraignment and before commencement of trial, or within such additional time as the court may fix upon application of the defendant made prior to entry of judgment. In an action in which either (a) material or information has been disclosed pursuant to paragraph (m) or (n) of subdivision one of section 245.20, (b) an eavesdropping warrant and application have been furnished pursuant to section 700.70, or (c) a notice of intention to introduce evidence has been served pursuant to section 710.30, such period shall be extended until forty-five days after the last date of such service. If the defendant is not represented by counsel and has requested an adjournment to obtain counsel or to have counsel assigned, such forty-five day period shall commence on the date counsel initially appears on defendant's behalf.

§ 8. Section 340.30 of the criminal procedure law is amended to read as follows:

§ 340.30 Pre-trial discovery and notices of defenses.

The provisions of article two hundred [forty] forty-five, concerning pre-trial discovery by a defendant under indictment in a superior court, and article two hundred fifty, concerning pre-trial notice to the people by a defendant under indictment in a superior court who intends to advance a trial defense of mental disease or defect or of alibi, apply to a prosecution of an information in a local criminal court.

§ 9. Subdivision 14 of section 400.27 of the criminal procedure law, as added by chapter 1 of the laws of 1995, is amended to read as follows:

14. (a) At a reasonable time prior to the sentencing proceeding or a mental retardation hearing:

[~~(i)~~] the prosecutor shall, unless previously disclosed and subject to a protective order, make available to the defendant the statements and information specified in subdivision one of section [240.45] 245.20 of this part and make available for inspection, photographing, copying or testing the property specified in subdivision one of section [~~240.20,~~ and

~~(ii) the defendant shall, unless previously disclosed and subject to a protective order, make available to the prosecution the statements and information specified in subdivision two of section 240.45 and make available for inspection, photographing, copying or testing, subject to constitutional limitations, the reports, documents and other property specified in subdivision one of section 240.30]~~ 245.20 of this part.

(b) Where a party refuses to make disclosure pursuant to this section, the provisions of section [~~240.35, subdivision one of section 240.40 and section 240.50]~~ 245.70, 245.75 and/or 245.80 of this part shall apply.

(c) If, after complying with the provisions of this section or an order pursuant thereto, a party finds either before or during a sentencing proceeding or mental retardation hearing, additional material subject to discovery or covered by court order, the party shall promptly make disclosure or apply for a protective order.

(d) If the court finds that a party has failed to comply with any of the provisions of this section, the court may ~~enter~~ employ any of the ~~orders~~ remedies or sanctions specified in subdivision one of section ~~[240.70]~~ 245.80 of this part.

§ 10. The opening paragraph of paragraph (b) of subdivision 1 of section 440.30 of the criminal procedure law, as added by chapter 19 of the laws of 2012, is amended to read as follows:

In conjunction with the filing or consideration of a motion to vacate a judgment pursuant to section 440.10 of this article by a defendant convicted after a trial, in cases where the court has ordered an evidentiary hearing upon such motion, the court may order that the people produce or make available for inspection property~~[, as defined in subdivision three of section 240.10 of this part,~~ in its possession, custody, or control that was secured in connection with the investigation or prosecution of the defendant upon credible allegations by the defendant and a finding by the court that such property, if obtained, would be probative to the determination of defendant's actual innocence, and that the request is reasonable. The court shall deny or limit such a request upon a finding that such a request, if granted, would threaten the integrity or chain of custody of property or the integrity of the processes or functions of a laboratory conducting DNA testing, pose a risk of harm, intimidation, embarrassment, reprisal, or other substantially negative consequences to any person, undermine the proper functions of law enforcement including the confidentiality of informants, or on the basis of any other factor identified by the court in the interests of justice or public safety. The court shall further ensure that any property produced pursuant to this paragraph is subject to a protective order, where appropriate. The court shall deny any request made pursuant to this paragraph where:

§ 11. Subdivision 10 of section 450.10 of the penal law, as added by chapter 795 of the laws of 1984, is amended to read as follows:

10. Where there has been a failure to comply with the provisions of this section, and where the district attorney does not demonstrate to the satisfaction of the court that such failure has not caused the defendant prejudice, the court shall instruct the jury that it may consider such failure in determining the weight to be given such evidence and may also impose any other sanction set forth in subdivision one of section ~~[240.70]~~ 245.80 of the criminal procedure law; provided, however, that unless the defendant has convinced the court that such failure has caused him undue prejudice, the court shall not preclude the district attorney from introducing into evidence the property, photographs, photocopies, or other reproductions of the property or, where appropriate, testimony concerning its value and condition, where such evidence is otherwise properly authenticated and admissible under the rules of evidence. Failure to comply with any one or more of the provisions of this section shall not for that reason alone be grounds for dismissal of the accusatory instrument.

§ 12. Section 460.80 of the penal law, as added by chapter 516 of the laws of 1986, is amended to read as follows:

§ 460.80 Court ordered disclosure.

Notwithstanding the provisions of article two hundred ~~[forty]~~ forty-five of the criminal procedure law, when forfeiture is sought pursuant to section 460.30 of this ~~chapter~~ article, the court may order discovery of any property not otherwise disclosed which is material and reasonably necessary for preparation by the defendant with respect to the forfeiture proceeding pursuant to such section. The court may issue

1 a protective order denying, limiting, conditioning, delaying or regulat-
2 ing such discovery where a danger to the integrity of physical evidence
3 or a substantial risk of physical harm, intimidation, economic reprisal,
4 bribery or unjustified annoyance or embarrassment to any person or an
5 adverse effect upon the legitimate needs of law enforcement, including
6 the protection of the confidentiality of informants, or any other factor
7 or set of factors outweighs the usefulness of the discovery.

8 § 13. Subdivision 5 of section 480.10 of the penal law, as added by
9 chapter 655 of the laws of 1990, is amended to read as follows:

10 5. In addition to information required to be disclosed pursuant to
11 article two hundred [~~forty~~ **forty-five**] of the criminal procedure law,
12 when forfeiture is sought pursuant to this article, and following the
13 defendant's arraignment on the special forfeiture information, the court
14 shall order discovery of any information not otherwise disclosed which
15 is material and reasonably necessary for preparation by the defendant
16 with respect to a forfeiture proceeding brought pursuant to this arti-
17 cle. Such material shall include those portions of the grand jury
18 minutes and such other information which pertain solely to the special
19 forfeiture information and shall not include information which pertains
20 to the criminal charges. Upon application of the prosecutor, the court
21 may issue a protective order pursuant to section [~~240.40~~ **245.70**] of the
22 criminal procedure law with respect to any information required to be
23 disclosed pursuant to this subdivision.

24 § 14. This act shall take effect on the ninetieth day after it shall
25 have become a law; provided, however, the amendments to section 65.20 of
26 the criminal procedure law made by section four of this act shall not
27 affect the repeal of such section and shall be deemed repealed there-
28 with.